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Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

IN RE:)
VACANT LAND LOCATED IN SAN DIEGO) Case No. 3:08-CV-00455-W-BLM
COUNTY APNS 279-150-22 AND 280-140-10)
THE UNITED STATES' ANSWER TO
THE PETITION

The United States of America, by and through its undersigned counsel, hereby responds to the
numbered allegations of the Petition as follows:

1. The United States admits the allegations in paragraph one.
2. The United States admits the allegations in paragraph two.
3. The United States admits the allegations in paragraph three.
4. The United States admits the allegations in paragraph four.
5. The United States admits the allegations in paragraph five.

6. The United States admits the allegations in paragraph six.

7. The United States admits the allegations in paragraph seven.

8. The United States presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph eight.

9. The United States presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph nine.

10. The United States presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ten.

11. The United States admits the allegations in paragraph eleven.

12. The United States admits the allegations in paragraph twelve, however denies that it is a complete list of potential claimants.

13. The United States presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph thirteen. The United States also denies that the Internal Revenue Service received proper notice.

14. The United States presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph fourteen.

15. The United States presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph fifteen.

16. The United States admits the allegations in paragraph sixteen.

CLAIM OF UNITED STATES OF AMERICA TO EXCESS FUNDS

Comes now the United States of America, by and through its undersigned counsel, asserting a claim against the surplus funds as follows:

17. A duly authorized delegate of the Secretary of Treasury made assessments on the following dates against taxpayers, Michael J. Spiker and Nancy S. Spiker, as follows:

Tax Period	Type of Tax	Date Assessed	Amount Assessed
June 2002	6672	10/24/2005	\$18,361.90

1	December 2002	6672	10/24/2005	\$16,871.08
2	March 2003	6672	10/24/2005	\$30,649.82
3	June 2003	6672	10/24/2005	\$30,024.23
4	September 2003	6672	10/24/2005	\$29,426.57
5	December 2003	6672	10/24/2005	\$6,286.80
6	March 2004	6672	10/24/2005	\$9,807.08
7	June 2004	6672	10/24/2005	\$4,334.84

8

9 18. On the dates of assessment referred to in paragraph 17 above, liens in the respective

10 amounts of the assessments arose in favor of the United States on all property and rights to property,

11 whether real or personal, belonging to Michael J. Spiker and Nancy S. Spiker under 26 U.S.C. § 6321.

12 19. Pursuant to § 6323, a Notice of Federal Tax Lien with respect to the above-described

13 assessments against Michael J. Spiker and Nancy S. Spiker was filed with the San Diego County

14 Recorder's Office on June 9, 2006.

15 20. Despite proper notice and demand for payment of the assessments referred to in paragraph

16 17 above, Michael J. Spiker and Nancy S. Spiker, have neglected, failed, or refused to make full payment

17 of the assessed amounts to the United States, and there remains due and owing, as of March 31, 2008, the

18 sum of \$156,779.16 on said assessments plus statutory interest accrued after March 31, 2008, less any

19 payments or credits.

20 21. The United States claims an interest in the real property at issue, and any funds to be paid

21 from its sale, by virtue of its statutory liens against the property of Michael J. Spiker and Nancy S.

22 Spiker.

23 **FIRST ADDITIONAL DEFENSE**

24 22. Although the United States has an interest in this action by virtue of federal tax liens, it

25 was not properly served in this matter. 28 U.S.C. § 2410(b); Fed. R. Civ. P. 4(i). Neither the United

26 States Attorney for the Southern District of California nor the Attorney General were properly served.

1 WHEREFORE, the United States prays that the Court:

2 A. Declare that the United States has a valid tax lien encumbering the real property at issue;

3 B. Determine the rights, titles, and interests of the parties in and to the funds, and distribute
4 the funds in accordance therewith; and

5 C. Grant the United States its costs and such other and further relief as is just and proper.

6
7 Respectfully submitted this 25th day of March, 2008.

8
9 KAREN P. HEWITT
United States Attorney

10 TOM STAHL
11 Assistant United States Attorney
Chief, Civil Division

12
13 /s/ Lauren Castaldi
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